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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re JAMES FLOYD CANNON and
 JAMIE DARLENE CANNON,

 Debtors.

Case No.: 15-bk-11835
 DC No.: RWM-1
 Chapter 7

Hon. Fredrick E. Clement

**DEBTOR'S EX PARTE APPLICATION TO
 REOPEN CASE**

*[Filed concurrently with Makarem Declaration, Ex
 Parte Notice, Proposed Order, Certificate of
 Service]*

Ex Parte Hearing

Date: *not set*

Time: *not set*

Place: *not set*

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The appointment of a trustee is neither necessary nor advisable because Debtor merely seeks a declaratory order, or leave of court, that will enable him to pursue his state-law malpractice claims in state court. Since those claims accrued after this matter was converted to Chapter 7, they are not and were not property of the estate. Debtor does not intend to amend the schedules or statements. In an abundance of caution, Plaintiff's malpractice complaint was previously filed in order to prevent the statute of limitations from running in the event the state court does not have jurisdiction.

[MEMORANDUM FOLLOWS ON NEXT PAGE]

MEMORANDUM

I. INTRODUCTION

Debtor seeks an administrative order reopening the bankruptcy case so that the Court may rule on Debtor's Motion to Deem *Barton* Doctrine Inapplicable or, Alternatively, to Obtain Leave of Court to Prosecute Malpractice Action in State Court. That motion will seek a determination as to whether the Court, pursuant to the federal common law *Barton* doctrine, has exclusive jurisdiction of state law malpractice claims against Debtor's former bankruptcy counsel. The requested relief is warranted because if the case is not reopened to obtain a declaratory ruling or leave of court, and a state court subsequently dismisses under the *Barton* doctrine for lack of subject matter jurisdiction, Plaintiff's claims may be time barred.

II. FACTUAL AND PROCEDURAL BACKGROUND

Debtor began the above-captioned matter on May 6, 2015 by filing a voluntary petition for bankruptcy under Chapter 13 of the United States Bankruptcy Code ("Code"). At the time, Debtor was represented by Robert Williams. (Pet., ECF No. 1). By order dated August 13, 2015, the Court converted this case to Chapter 7. (Order, ECF No. 85). On March 14, 2016, the Court denied Debtor a discharge under § 727 of the Code. (J., ECF No. 403). On May 17, 2017, a final decree issued closing the bankruptcy estate. (Final Decree, ECF No. 655).

Debtor alleges that he incurred damages following conversion to Chapter 7 as a result of Mr. Williams professional negligence in connection with the bankruptcy proceedings. This application followed in order to determine the applicability of the *Barton* doctrine to Debtor's state-law claims against Mr. Williams.

III. LEGAL ANALYSIS

Section 350(b) of the Code provides that a "case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). Federal Rule of Bankruptcy Procedure 5010 permits a court to

1 reopen a case on motion of the debtor. Fed. R. Bankr. P. 5010. If the case is reopened, a
2 trustee shall not be appointed “unless the court determines that a trustee is necessary to
3 protect the interest of creditors and the debtor or to insure efficient administration of the
4 case.” *Id.*

5 Motions for the reopening of cases should be “routinely granted because the case is
6 necessarily reopened to consider the underlying request for relief.” *In re Dodge*, 138 B.R.
7 602, 605 (Bankr. E.D. Cal. 1992). The underlying relief requested is not to be decided in an
8 administrative motion to reopen. *Menk v. LaPaglia*, 241 B.R. 896, 916-17 (9th Cir. B.A.P.
9 1999). The Court has broad discretion to determine what constitutes “cause” for reopening
10 a case under § 350(b). *Elias v. Lisowski Law Firm, CHTD*, 215 B.R. 600, 604 (B.A.P. 9th Cir.
11 1997). Thus, “cause” pursuant to § 350 includes a request by a party in interest for a
12 determination of whether the *Barton* Doctrine applies. *See In re Weitzman*, 381 B.R. 874, 880
13 (Bankr. N.D. Ill. 2008).

14 Here, there is ample cause to reopen the case so that the Court can decide Debtor’s
15 motion that seeks a ruling on the applicability of the *Barton* doctrine. If the Court rules that
16 the *Barton* doctrine does not apply, then Debtor will dismiss his previously filed federal
17 complaint and proceed in state court. If the Court rules that the *Barton* doctrine does apply,
18 it nevertheless has discretion to grant leave so that Debtor may dismiss the federal
19 complaint and proceed in state court. Under either scenario, this matter can then be closed.
20 Since neither the interests of creditors nor administrative efficiency are implicated, a trustee
21 “shall not be appointed.” Fed. R. Bankr. P. 5010.

22 On the other hand, if the Court determines the *Barton* doctrine does apply but does
23 not grant leave, then this matter will need to be remained open so that Debtor can litigate
24 his malpractice claims. Since those claims accrued after conversion to Chapter 7, they are
25 not, and never should have been, property of the bankruptcy estate. Hence, the interests of
26 creditors are not implicated. Further, since the litigation would be limited to a
27 straightforward malpractice claim, it is in the nature of a simple two party adversary
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1 proceeding easily susceptible of administration by the Court. Accordingly, there would be
2 no need to appoint a trustee. Fed. R. Bankr. P. 5010.

3 **IV. CONCLUSION**

4 For the forgoing reasons, Debtor respectfully requests the Court to reopen the matter
5 for the limited purpose described above.

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7 Dated: January 16, 2018

MAKAREM & ASSOCIATES, APLC

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11 By: /s/ Ronald W. Makarem
12 Ronald W. Makarem
13 Attorneys for Debtor JAMES CANNON
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